VIRGINIA: IN THE COURT OF HUSTINGS FOR THE CITY OF PORTSMOUTH HELD ON THE 17TH DAY OF FEBRUARY, 1968

RALPH J. FESTA,
Plaintiff

vs.

CIVIL SERVICE COMMISSION,
Defendant

ON APPEAL

Law Docket #5377

MEMORANDUM AND OPINION

The matter of the discharge of Mr. Ralph J. Festa as a Captain on the Portsmouth, Virginia, Police Department was heard on appeal from the ruling of the Civil Service Commission of this city on Saturday, February 10, 1968, and taken under advisement at the conclusion of the hearing. The Court at that time stated it would render its judgment in this matter on Saturday, February 17, 1968. Thusly, we are here today.

The Civil Service Commission at the request of Mr. Festa held an open hearing on November 1, 1967, concerning his previous dismissal by the City Manager after a hearing and upon the recommendation of the Chief of Police for violation of Chapter XII, Section 6 (a), (b) and (g), of the Charter of City of Portsmouth; Chapter XII being entitled 'Classified Civil Service'. The effective date of dismissal was September 7, 1967. The Civil Service Commission concurred in the action of the City Manager.

Chapter XII, Section 3 (e) of the Charter of City of Portsmouth sets forth as follows: "All hearings and investigations before the Commission, shall be governed by this act and by the rules and practice and procedure to be adopted by the Commission, and in the conduct thereof the Commission shall not be bound by the technical rules of evidence. No informality in any proceeding or hearing, or in the manner of taking testimony before the Commission, shall invalidate any order, decision, rule or regulations made, approved or confirmed by the Commission"

For the authority vested in this Court on appeal from an order of discharge reference is made to Chapter XII, Section 7, of the Charter of the City of Portsmouth, wherein is set forth as follows: "The Court of original and unlimited jurisdiction in civil suits shall thereupon proceed to hear and determine such appeal in a summary manner; provided, however, that such hearing shall be confined to the determination of whether the order or judgment of removal, suspension, demotion or discharge made by the appointing power and concurred in by the Commission, was or was not made in good faith for cause, or was or was not for political or religious reasons, and no appeal to such court shall be taken except upon such ground or grounds".

Admittedly by counsel for both parties we are not concerned with the question of politics or religion. Thus, the issue resolves itself as to whether or not the order of discharge made by the appointing power and concurred in by the Commission was or was not made in good faith for cause?

Briefly, the evidence before the Court discloses that the morning of September 7, 1967, Mr. Festa was on duty as Captain of the Watch and in such capacity was the

senior police officer in charge. That while on duty in such capacity he absented himself, although remaining on the air, for more than two hours in the early morning. About 4:30 a.m. when asked for his location he stated to be at Jackson and Lee Streets, which do not intersect but parallel, when in fact he was in a residence numbered 112 Pinners Street some five to six blocks away. At this time the Chief of Police was seated in his car some 75 feet behind Captain Festa's car, car #23, which was parked on Pinners Street. When Captain Festa was notified to return to headquarters it was nine minutes before he appeared on the porch in front of 112 Pinners Street. He then drove to the corner of Hill Street and turned left before turning his lights on. When questioned concerning his conduct Captain Festa said he was on a stake out concerning a uniformed police officer fooling around over there.

There was further evidence that Captain Festa on several occasions allowed a patrolman not entitled to overtime leave to be off duty a full day at the time when in fact he was recorded as working the full watch.

From the aforegoing brief resume of the evidence, and after carefully reviewing the various points raised by counsel, it is the considered opinion of this Court that the order of discharge made by the appointing power and concurred in by the Civil Service Commission was made in good faith for cause.

R. WINSTON BAIN

Judge

VIRGINIA: IN THE COURT OF HUSTINGS FOR THE CITY OF PORTSMOUTH

R. J. FESTA

V.

CIVIL SERVICE COMMISSION

ORDER

This day came the above named parties, by counsel, upon the appeal of R. J. Festa from the judgment of the Civil Service Commission of the City of Portsmouth, Virginia, pursuant to Chapter XII, Section 7 of the Charter of the City of Portsmouth, Virginia, (Chapter 246, Acts of Assembly, 1942) and the matter was fully argued by counsel: and

it appearing to the Court upon mature consideration that the judgment of the Civil Service Commission of the City of Portsmouth was made in good faith for cause and that no constitutional questions are presented;

it is ADJUDGED, ORDERED and DECREED that the judgment of the Civil Service Commission of the City of Portsmouth rendered in this matter November 8, 1967, be and the same hereby is affirmed, to which ruling and action of the Court R. J. Festa, by counsel, objects and excepts.

Entered this 7th day of March, 1968

R. WINSTON BAIN
Judge

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 16th day of October, 1968.

The petition of Ralph J. Festa for a writ of effor to a judgment rendered by the Court of Hustings for the City of Portsmouth on the 7th day of March, 1968, in a certain proceeding then therein depending, wherein the said petitioner was plaintiff and the Civil Service Commission of the City of Portsmouth was defendant, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of opinion that the said judgment is plainly right, doth reject said petition, and refuse said writ of error, the effect of which is to affirm the judgment of the said hustings court.

A Copy,
Teste:

H. TURNER
Clerk